

REMARKS

Submitted herewith is the Declaration of Roger Alderink ("Declaration") and Attachment A thereto. Attachment B, a CD with the video clip referenced in the Declaration, is being filed by Express Mail on July 25, 2008.

As set forth in the Declaration, Mr. Alderink has extensive experience in the material handling industry, specifically in the mechanized distribution market and more specifically with positive sortation sorters. Declaration ¶1, Declaration Attachment A. As stated in the Declaration, Declaration ¶3, Mr. Alderink has reviewed a video, Declaration Attachment B, which shows sortation of cartons at a divert location constructed in accordance with the pending claims of the present patent application, USSN 20/800,070 (the "'070 application"). Mr. Alderink has completely read and formed an understanding of the '070 application and its claims, Declaration ¶5, and states that a sorter with more than one divert location as shown in the video meets the limitations of at least claims 13-19, 21, 23-32, 35, 37-44, 46, 48, 53 and 175. Declaration ¶5.

The Examiner asserts that the rejected claims are obvious under 35 U.S.C. §103(a) based on Kelsey (USP 5,967,289) in view of Piron (USP 6,419,073). The Examiner asserted that Piron discloses an arcuate guide portion, and that it would have been obvious to one of ordinary skill in the art to include such an arcuate guide portion on Kelsey.

As indicated in the Declaration, Mr. Alderink as well as engineers or other persons who design or develop positive sortation sorters, faced with overcoming the problems of increasing the cartons per minute rate or of operating sorters at higher speeds, would not consider the device disclosed in Piron to be relevant. Declaration ¶7. The device disclosed in Piron is used in a different industry and is directed to moving product from one conveyor line to another line that is running parallel to the sorter, Declaration ¶7, not off the side of the sorter to take away lines. Piron relates to a conveyor that employs platens to carry articles. Articles on the conveyor of Piron are realigned with a desired exit conveyor located at the end of the conveyor (a 0° angle). The realignment occurs by moving the platen or platens on which an article is supported and carried. The article is always in contact with the platens, so there is no initial contact zone.

Additionally, as indicated in the Declaration, overlooking the fact that Piron is non-analogous art, it would not have been obvious to modify Kelsey in view of Piron to reach the rejected claims. Mr. Alderink states in the Declaration that the differences between a sorter

with a linear guide path and a sorter with an arcuate guide path would not be obvious to a person having ordinary skill in this art. Declaration ¶9 “A sorter with an arcuate guide path with an entrance disposed less than 20 degrees, and a sorter with a divert guide path having a plurality of divert angles with an initial contact zone portion disposed at less than 20 degrees are both not obvious. ... It is unique and not obvious to a person having ordinary skill in this design area.” Declaration ¶9

Mr. Alderink continues on to state “For the past several decades, development engineers at at least a dozen suppliers have spent millions of dollars and thousands of hours attempting to enhance positive sortation. It should be noted that the ‘070 application is the 1st time that anyone in the area of positive sortation has ever used this concept of an arcuate guide path. ... It is unique and not obvious to a person having ordinary skill in this design area.” Declaration ¶9.

CONCLUSION

In view of the evidence set forth in the Declaration, it is clear the rejections of the pending claims based on the combination of Kelsey and Piron should be withdrawn. If the Examiner is of the view that all of the pending claims of the application are not in clear condition for allowance, it is requested that the Examiner telephone the undersigned for purposes of conducting a telephone interview to resolve any differences. Accordingly, an early notice of allowance is earnestly solicited.

Respectfully submitted,

FROST BROWN TODD LLC



Edwin R. Acheson, Jr., Reg. No. 31,808
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202
(513) 651-6708

July 25, 2008
Date